



**SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT**

FAS

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code		Dept. SC097A		Contract Number	
County Department Public Works – Flood Control			Dept. 097	Orgn. 097	Contractor's License No.	
County Department Contract Representative Jerry Ivy, P.E., Chief			Telephone 387-7920		Total Contract Amount - Current \$265,000.00	
Contract Type <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: _____						
Commodity Code		Contract Awarded		Contract End Date		Original Amount \$265,000.00
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	This Amendment
RFA	091	091	200	2445		\$190,000.00
RFF	092	092	200	2445		\$65,000.00
RFL	093	093	200	2445		\$10,000.00
Project Name <u>Contract Management</u> <u>Emergency Basin</u> <u>Cleanup Projects</u> CONTRACT TYPE - 2(B)			Estimated Payment Total by Fiscal Year – This Amendment			
			FY	Amount	I/D	FY
			04/05	265,000.00	I	

THIS CONTRACT is entered into in the State of California by and between the San Bernardino County Flood Control District, hereinafter called the District, and

Name Caltrop Engineering Corporation hereinafter called: Consultant
 Address 1037 West Ninth Street
Upland, CA 91786
 Telephone (909) 931-9331 Federal ID No. 95-4455048

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, DISTRICT is in need of a consultant engineering firm to provide construction contract management services for the Emergency Basin Cleanup Projects, hereinafter called PROJECT; and

WHEREAS, CONSULTANT has staff available that is capable of providing these services; and

WHEREAS, DISTRICT and CONSULTANT wish to enter into an agreement whereby CONSULTANT will provide the necessary services to the DISTRICT during construction of PROJECT;

Auditor / Controller – Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

Now, therefore, in reference to the aforementioned, the parties agree as follows:

ARTICLE I. DISTRICT Shall:

- A. Provide CONSULTANT with all available information pertaining to the design of the PROJECT. This would include design plans and specifications information and any backup data which may be required to assist CONSULTANT.
- B. Make payment to CONSULTANT on a monthly basis as set forth in Exhibit A which is attached and included as part of the Agreement.
- C. Comply with the provisions set forth in Exhibit B, General Provisions, which is attached and included as part of the Agreement.
- D. Provide construction surveying for the PROJECT, as required.

ARTICLE II. CONSULTANT shall:

- A. Provide full range of construction management services for the PROJECT, including inspection and all quality control/quality assurance services necessary to successfully complete the PROJECT.
- B. Provide the necessary staffing to adequately carryout the services, and employ the personnel specifically set forth in Exhibit A, for the entire length of the PROJECT.
- C. Carryout to the maximum extent possible the General Provisions set forth in Exhibit B, including the duties and responsibilities set forth for the Resident Project Representative (RPR) in Exhibit C.

ARTICLE III. General Provisions:

- A. **Conflict of Interest** - CONSULTANT shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or shall have any relationship to the CONSULTANT or officer or employee of the CONSULTANT.
- B. **Former County Officials** – CONSULTANT must provide information on former County of San Bernardino Administrative officials (as defined below) who are employed by or represent CONSULTANT's business. The information provided must include a list of former County Administrative Officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business.

This information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of CONSULTANT's business. For purposes of this section, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer's staff, group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

Failure to provide this information may result in termination of this contract.

- C. **INSURANCE - Indemnification** - CONSULTANT agrees to indemnify, defend and hold harmless the DISTRICT and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising from CONSULTANT's negligent acts, errors or omissions and for any costs or expenses incurred by the DISTRICT on account of any claim therefore, except where such indemnification is prohibited by law.

Insurance - Without in anyway affecting the indemnity herein provided and in addition thereto, the CONSULTANT shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation - A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this Agreement.

If CONSULTANT has no employees, it may certify or warrant to DISTRICT that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

With respect to CONSULTANTS that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

Comprehensive General and Automobile Liability Insurance - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omissions Liability Insurance - Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

Professional Liability - Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Errors and Omissions Liability Insurance is not required for the Board of Directors of non-profit corporations organized under California or Federal law.

Additional Named Insured - All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the DISTRICT and its officers, employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights - Except for the Errors and Omissions Liability and Professional Liability, CONSULTANT shall require the carriers of the above required coverages to waive all rights of subrogation against the DISTRICT, its officers, employees, agents, volunteers, contractors and subcontractors.

Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the DISTRICT.

Proof of Coverage - CONSULTANT shall immediately furnish certificates of insurance to the DISTRICT Department administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the CONSULTANT shall furnish certified copies of the policies and all endorsements.

Insurance Review - The above insurance requirements are subject to periodic review by the DISTRICT. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the DISTRICT, inflation, or any other item reasonably related to the DISTRICT's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONSULTANT agrees to execute any such amendment within thirty (30) days of receipt.

- D. **EQUAL EMPLOYMENT OPPORTUNITY** - CONSULTANT shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, County Policy and other applicable federal, state and County laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

ARTICLE IV. DISTRICT and CONSULTANT Further Agree:

- A. DISTRICT may provide at its option and at its own expense, inspection of the construction site and on-going activities. Such inspection will be of an oversight nature, for coordination and information purposes only and will not interfere with CONSULTANT's activities as set forth in this Agreement.
- B. Mutual trust and cooperation is of the utmost importance to the successful completion of the PROJECT and both parties agree to use due diligence in the performance of their respective duties and responsibilities.
- C. If construction is extended beyond the anticipated number of working days specified in the construction contract, CONSULTANT agrees to continue with their services at the agreed rate until the PROJECT is completed.
- D. This Agreement will expire sixty (60) calendar days after final acceptance of the construction project or closeout of the construction contract, whichever is later.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands.

SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT

► _____
Dennis Hansberger, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Clerk of the Board of Supervisors
of the County of San Bernardino.

By _____
Deputy

_____ Caltrop Engineering Corporation
(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address 1037 West Ninth Street
Upland, CA 91786

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

► _____
County Counsel

► _____

► _____
Department Head

Date _____

Date _____

Date _____

EXHIBIT A – RATE SCHEDULE

CM - Emergency Basin Cleanup Projects - F01961 thru F01976				
Labor Expense Cost				
Quantity	Unit	Labor Classification	Rate	Cost
10	Hours	Project Manager	\$ 135.00	\$ 1,350.00
180	Hours	Resident Engineer	\$ 110.00	\$ 19,800.00
1,280	Hours	Inspector	\$ 98.00	\$ 125,440.00
960	Hours	Inspector Overtime	\$ 122.00	\$ 117,120.00
1,290	\$	Miscellaneous	\$ 1.00	\$ 1,290.00
PROJECT TOTAL:				\$ 265,000.00

Notes on Rate Schedule

Hourly Rate includes Vehicle, Cellular Phone, Personal Equipment and Profit.

Labor hours for inspectors start and end at job-site.

Labor Hours are estimated. Payments for labor will be based on actual hours worked.

When contractor does not work, there will be no charges for inspection, except "show up" time, if applicable.

Overtime Rates will be billed as listed above.

Reimbursable Direct Expense costs are estimated. Payments will be based on actual costs.

EXHIBIT B – GENERAL PROVISIONS

SECTION I - BASIC SERVICES OF CONSULTANT

During the Construction Phase:

- 1.1 *General Administration of Construction Contract.* CONSULTANT shall consult with and advise DISTRICT and act as DISTRICT's representative as provided for in this contract and general provisions. All of DISTRICT's instructions to Contractor(s) will be issued through CONSULTANT who will have authority to act on behalf of DISTRICT to the extent provided for in this contract and general provisions.
- 1.2 *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor(s) while it is in progress:
 - 1.2.1 CONSULTANT shall make visits to the site at intervals appropriate to the various stages of construction as CONSULTANT deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor(s) work. In addition, CONSULTANT shall provide the services of a Resident Project Representative at the site to assist CONSULTANT and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, CONSULTANT shall endeavor to determine, in general, if such work is proceeding in accordance with the Contract Documents and CONSULTANT shall keep DISTRICT informed of the progress of the work.
 - 1.2.2 The Resident Project Representative will be CONSULTANT's agent or employee and under CONSULTANT's supervision. The duties and responsibilities of the Resident Project Representative are set forth in "Duties, Responsibilities, and Limitation of Authority of Resident Project Representative", attached hereto.
 - 1.2.3 The purpose of CONSULTANT's visit to and representation by the Resident Project Representative at the site will be to enable CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase, and, in addition, exercise of CONSULTANT's efforts as an experienced and qualified design professional, to provide for DISTRICT a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, CONSULTANT shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct, or have control over Contractor(s)' work nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s), or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, CONSULTANT can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.
- 1.3 *Defective Work.* During such visits and on the basis of such observations, CONSULTANT may disapprove of or reject Contractor(s) work while it is in progress if CONSULTANT believes that such work will not produce a completed PROJECT that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the PROJECT as reflected in the Contract Documents.
- 1.4 *Interpretations and Clarifications.* DISTRICT shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.
- 1.5 *Substitutes.* CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of the second subparagraph of paragraph 2.1.2.
- 1.6 *Inspections and Tests.* CONSULTANT shall have authority, as DISTRICT's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings, and approvals required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

EXHIBIT B – GENERAL PROVISIONS (Continued)

- 1.7 *Disputes between DISTRICT and Contractor.* CONSULTANT shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of DISTRICT and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. CONSULTANT shall not be liable for the results of any such interpretations or decision rendered in good faith.
- 1.8 *Applications for Payment.* Based on CONSULTANT's on-site observations as an experienced and qualified construction design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:
- 1.8.1 CONSULTANT shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to DISTRICT, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of the CONSULTANT's knowledge, information, and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).
- 1.8.2 By recommending any payment CONSULTANT will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by CONSULTANT to check the quality of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to CONSULTANT in this Agreement and the Contract Documents. CONSULTANT's review of Contractor(s)' work for the purposes of recommending payments will not impose on CONSULTANT's responsibility to supervise, direct, or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes, or orders applicable to their furnishing and performing the work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purposes any Contractor has used the money's paid on account of the Contract Price, or to determine that title to any of the work, material, or equipment has passed to DISTRICT free and clear of any lien, claims, security interests, or encumbrances, or that there may not be other matters at issue between DISTRICT and Contractor that might affect the amount that should be paid.
- 1.9 *Contractor(s)' Completion Documents.* CONSULTANT shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests, and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to DISTRICT with written comments.
- 1.10 *Inspections.* CONSULTANT shall conduct inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor(s) and may give written notice to DISTRICT and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed) but any such recommendations and notice will be subject to the limitations expressed in Paragraph 1.8.2.
- 1.11 *Limitation of Responsibilities.* CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's supplier's agents or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in Paragraphs 1.6.1 thru 1.6.10 inclusive, shall be construed to release CONSULTANT from liability for failure to properly perform duties and responsibilities assumed by CONSULTANT in the Contract Documents.

EXHIBIT B – GENERAL PROVISIONS (Continued)

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 Normal and customary engineering services do not include service in respect of the following categories of work which are usually referred to as Additional Services.

2.1.1 If DISTRICT wishes CONSULTANT to perform any of the following Additional Services, DISTRICT shall so instruct CONSULTANT in writing, and CONSULTANT shall perform or obtain from others such services and will be paid therefor as provided in the Agreement:

- Preparation of applications and supporting documents for governmental financial support of the PROJECT in addition to those required under Basic Services; preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.
- Services to make measure drawings of or to investigate existing conditions or facilities.
- Services resulting from significant changes in the general scope, extent or accepted by DISTRICT where changes are due to causes beyond CONSULTANT's control.
- Providing renderings or models.
- Preparing documents for alternate bids requested by DISTRICT for work which is not executed or for out-of-sequence work.
- Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings, and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.
- Furnishing the services of independent professional associates or consultants for other than Basic Services.
- If CONSULTANT's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, services resulting from the award of more than one prime contract for construction, materials, equipment, or services for the PROJECT, or from the construction contract containing cost plus incentive-savings provisions for Contractor's basic compensation, or from arranging for performance by persons other than the principal prime contractors or from administering DISTRICT's contracts for such services.
- Services in connection with field surveys for design purposes and engineering surveys and staking out the work of Contractor(s).
- Preparing to serve or serving as a consultant or witness in any litigation, arbitration, or other legal or administrative proceeding except where required as part of Basic Service.

2.1.2 When required by the Contract Documents in circumstances beyond CONSULTANT's control, CONSULTANT shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instruction from DISTRICT, and CONSULTANT will be paid therefor as provided in the Contract Pay Schedule, Exhibit A.

- Services in connection with work directive changes and change orders to reflect the changes requested by DISTRICT if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor(s); and evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.
- Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.
- Additional or extended services during construction made necessary by (1) work damage by fire or other causes during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal work hours, (4) default by Contractor.

SECTION 3 - DISTRICT'S RESPONSIBILITIES

3.1 DISTRICT shall provide all criteria and full information as to DISTRICT's requirements for the PROJECT; designate a person to act with authority on DISTRICT's behalf in respect to all aspects of the PROJECT; examine and respond promptly to CONSULTANT's submissions; and give prompt written notice to CONSULTANT whenever DISTRICT observes or otherwise becomes aware of any defect in the work.

EXHIBIT B – GENERAL PROVISIONS (Continued)

3.2 DISTRICT shall also do the following and pay all costs incident thereto:

- Furnish to CONSULTANT boring, probing, and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic, and utility surveys, property descriptions; zoning and deed restrictions; all of which CONSULTANT may rely upon in performing services hereunder.
- Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property.
- Provide engineering surveys to establish reference points for construction.
- Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT.
- If more than one prime contractor is to be awarded for construction, designate a party to have responsibility and authority for coordinating the activities of the various prime contractors.

SECTION 4 - MEANING OF TERMS

4.1 As used herein the term “this Agreement” refers to the Agreement to which these General Provisions are attached and to these General Provisions. The sections “Further Description of Basic Engineering Services and Related Matters” and “Duties, Responsibilities and Limitations of Authority of Resident Project Representative”, are included as if they were part of one of the same document.

4.2 The construction cost of the PROJECT (herein referred to as “Construction Cost”) means the total costs to DISTRICT of those portions of the PROJECT designed and specified by DISTRICT, but it will not include CONSULTANT’s compensation for or damages to, properties unless this Agreement so specifies, nor will it include DISTRICT’s legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the PROJECT or the cost of other services to be provided by others to DISTRICT.

4.3 Direct Labor Costs used as a basis for payment means salaries and wages (basic and incentive) paid to all CONSULTANT’s personnel engaged directly on the PROJECT, including, but not limited to, CONSULTANT’s architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; but does not include indirect payroll related costs or fringe benefits. For the purposes of this Agreement the principals of CONSULTANT and their current hourly Direct Labor Costs are:

Not Applicable

4.4 The Salary Costs used as a basis for payment means salaries and wages (basic and incentive) paid to all CONSULTANT’s personnel engaged directly on the PROJECT, including, but not limited to, CONSULTANT’s architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health contributions and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.5 Reimbursable Expenses means the actual expenses incurred by CONSULTANT or CONSULTANT’s independent professional associates or consultants directly or indirectly in connection with the PROJECT, such as expenses for toll telephone calls and telegrams, reproduction of reports, Drawings, Specifications, Bidding Documents and similar PROJECT related items in addition to those required under Section 1, and if authorized in advance by DISTRICT, overtime work requiring higher than regular rates. In addition, when compensation for Basic Services is on the basis of cost plus a fixed fee, Direct Labor Costs or Payroll Costs method of payment, if authorized in advance by DISTRICT, Reimbursable Expenses will also include expense incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expense of photographic production techniques times a factor of 1.2.

SECTION 5 - ADDITIONAL PROVISIONS

EXHIBIT B – GENERAL PROVISIONS (Continued)

5.1 *Termination.* The obligation to provide further services under this Agreement may be terminated by either party upon thirty days written notice. In the event of any termination, CONSULTANT will be paid for all services rendered to the date of termination and all Reimbursable Expenses.

5.2 *Successors and Assigns.* DISTRICT and CONSULTANT are hereby bound as follows:

- 5.2.1 DISTRICT and CONSULTANT each is hereby bound and the partners, successors, executors, administrators, and legal representatives of DISTRICT and CONSULTANT (and to the extent permitted by Paragraph 5.3.2 the assigns of DISTRICT and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- 5.2.2 Neither DISTRICT nor CONSULTANT shall assign, sublet, or transfer any rights under interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder such services shall be approved by the DISTRICT.
- 5.2.3 Nothing under this Agreement shall be construed to give any rights or benefits in the Agreement to anyone other than DISTRICT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of DISTRICT and CONSULTANT and not for the benefit of any other party.

EXHIBIT C – RESIDENT PROJECT REPRESENTATIVE

A LISTING OF DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE

CONSULTANT shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist CONSULTANT in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, CONSULTANT shall endeavor to provide further protection for DISTRICT against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make CONSULTANT responsible for or give CONSULTANT control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the work in accordance with the Contract Documents and in particular the specific limitations set forth in Paragraph 1.6 of the General Provisions to the Letter Agreement are applicable.

The duties and responsibilities of the RPR are limited to those of CONSULTANT in CONSULTANT's agreement with the DISTRICT and in the construction Contract Documents, are further described as follows:

A. General

RPR is CONSULTANT's agent at the site, will act as directed by and under the supervisions of CONSULTANT, and will confer with CONSULTANT regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall be with CONSULTANT and CONTRACTOR keeping DISTRICT advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with DISTRICT with the knowledge of and under direction of CONSULTANT.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, consult with DISTRICT concerning acceptability.
2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other PROJECT related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as CONSULTANT's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist CONSULTANT in serving as DISTRICT's liaison with CONTRACTOR when CONTRACTOR's operations affect DISTRICT's on-site operations.
 - b. Assist in obtaining from DISTRICT additional details or information, when required for proper execution of the work.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and samples;
 - b. Receive samples which are furnished at the site by CONTRACTOR, and notify CONSULTANT of availability of samples for examination.
 - c. Advise CONSULTANT and CONTRACTOR of the commencement of any work requiring a Shop Drawing or sample.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the work in progress to assist CONSULTANT in determining if the work is in general in accordance with the Contract Documents.
 - b. Report to DISTRICT whenever RPR believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise DISTRICT of work that RPR believes should be corrected or rejected or should be uncovered for observation or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate details relative to the test procedures and startups.

EXHIBIT C – RESIDENT PROJECT REPRESENTATIVE (Continued)

- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the PROJECT, record the results of these inspections and report to CONSULTANT.
6. Interpretation of Contract Documents: Report to DISTRICT when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by DISTRICT.
7. Modifications: consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to DISTRICT. Transmit to CONTRACTOR decisions as issued by DISTRICT.
8. Records
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contractor, DISTRICT's clarifications and interpretations of the Contract Documents, Progress Reports, and other PROJECT related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to DISTRICT.
 - c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors, and major suppliers of materials and equipment.
9. Reports
 - a. Furnish DISTRICT weekly periodic reports as required of progress of the work and of CONTRACTOR's compliance with the progress schedule and of Shop Drawing and sample submittals.
 - b. Consult with CONSULTANT and comply in advance of scheduled major tests, inspections or start of important phases of work.
 - c. Draft proposed Change Orders and recommend to DISTRICT Change Orders, Work Directive Changes, and Field Orders.
 - d. Report immediately to CONSULTANT and DISTRICT upon the occurrence of any accident.
10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to CONSULTANT, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the work.
11. Certificates, Maintenance, and Operation Manuals: During the course of the work, verify that certificates, maintenance, and operations manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to CONSULTANT for review and forwarding to DISTRICT prior to final payment for work.
12. Completion:
 - a. Before CONSULTANT issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
 - b. Conduct final inspection in the company of CONSULTANT, DISTRICT, and CONTRACTOR and prepare a final list of items to be completed or corrected.
 - c. Observe that all items on final list have been completed or corrected and make recommendations to CONSULTANT concerning acceptance.

Limitations of Authority

Resident Project Representative

1. Shall not authorize any deviation from the Contract Documents substitution of materials or equipment, unless authorized by DISTRICT.

EXHIBIT C – RESIDENT PROJECT REPRESENTATIVE (Continued)

2. Shall not exceed limitations of CONSULTANT's authority as set forth in the Agreement or the General Provisions to the Letter Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work. Notwithstanding the foregoing, the CONSULTANT may take any immediate action it deems necessary to prevent or mitigate danger to persons or property that may result in damage, injury or death at the PROJECT site, including, but not limited to, suspending the Construction Contractor's operations.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize DISTRICT to occupy the PROJECT in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by CONSULTANT.